

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Post NL–United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2013-4

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
NOTICE CONCERNING TYPE 2 RATE ADJUSTMENT
AND ROYAL POSTNL 2013 BILATERAL
NEGOTIATED SERVICE AGREEMENT

(November 30, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1552.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service notice of a Type 2 rate adjustment in conjunction with a new market dominant international negotiated service agreement.² The Notice concerns the inbound portion of a bilateral agreement with Royal PostNL (PostNL 2013 Agreement) to be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.³ The inbound portion of the instant Agreement would set negotiated rates for inbound letterpost items, including International Registered Mail service. Notice at 4.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product, and included the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke

¹ PRC Order No. 1552, Notice and Order Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, November 20, 2012.

² Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 15, 2012 (Notice).

³ Notice at 1. Royal PostNL is the postal operator of the Netherlands. *Id.* at 10.

TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement) in the product.⁴ The Commission subsequently approved separate Postal Service notices seeking the addition of bilateral agreements with Hongkong Post and China Post to the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.⁵ The Commission also approved bilateral agreements with Singapore Post, Australia Post, Hongkong Post, and Canada Post for inclusion in the product.⁶

The PostNL 2013 Agreement is a successor to the existing TNT Agreement. Notice at 3. The negotiated rates in the PostNL 2013 Agreement are intended to become effective on January 1, 2013, after the rates set forth in the TNT Agreement expire on December 31, 2012, and remain in effect for two years (December 31, 2014), unless terminated sooner. *Id.* at 3; Attachment 2, at 7.

The Postal Service asserts that the negotiated rates in the PostNL 2013 Agreement represent an “improvement over the default rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items.” *Id.* at 1. The Postal Service also asserts that the PostNL 2013 Agreement is functionally equivalent to the China Post 2010 Agreement, TNT Agreement, Hongkong Post 2011 Agreement and the China Post 2011 Agreement. *Id.* at 8. Therefore, the Postal Service requests that the

⁴ PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, Docket Nos. MC2010-35, R2010-5, and R2010-6, September 30, 2010.

⁵ See PRC Order No. 700, Order Approving Rate Adjustment for HongKong Post—United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2011-4, March 18, 2011 (Hongkong Post 2011 Agreement); see also PRC Order No. 871, Order concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, PRC Docket No. R2011-7, September 23, 2011 (China Post 2011 Agreement).

⁶ See PRC Order No. 995, Order Approving Rate Adjustment for Singapore Post—United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, Docket No. R2012-1, November 23, 2011 (Singapore Post 2012 Agreement); PRC Order No. 996, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. R2012-2, November 23, 2011 (Australia Post 2012 Agreement); PRC Order No. 1058, Order Approving Request to Include Hongkong Post Group Bilateral Agreement within an Existing Market Dominant Product, Docket No. R2012-4, December 20, 2011 (Hongkong Post 2012 Agreement); PRC Order No. 1078, Order Concerning Rate Adjustment for Bilateral Agreement with Canada Post Negotiated Service Agreement, Docket No. R2012-5, December 27, 2011 (Canada Post 2012 Agreement).

PostNL 2013 Agreement be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.* at 12.

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, and the PostNL 2013 Agreement and the supporting financial model filed under seal that accompanied the Notice. Based upon that review, the Public Representative concludes that the negotiated rates in the instant Agreement would improve the net financial position of the Postal Service. In addition, the Public Representative concludes that the PostNL 2013 Agreement is functionally equivalent to the baseline TNT Agreement.

Statutory Criteria. The Postal Service states that pursuant 39 U.S.C. § 3622(c)(10), Commission review of a market dominant negotiated service agreement is to address three statutory criteria: whether such an agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* at 8. With respect to criteria (2) and (3), the Postal Service makes reasonable arguments that these criteria are not implicated by the inbound PostNL 2013 Agreement. *Id.* at 5-6, and 8.

With respect to criterion (1), the Public Representative concludes that the negotiated rates in the PostNL 2013 Agreement would improve the net financial position of the Postal Service. This conclusion follows from replacing the negotiated rates in the financial model with the calendar year (CY) 2013, and an estimate of the CY 2014, UPU "provisional" terminal dues rates for target system countries that would otherwise be applicable to inbound letterpost from the Netherlands in the absence of the instant Agreement.⁷ With these changes, the results of the financial model indicate that the negotiated rates generate additional contribution (*i.e.*, a smaller negative contribution) to the Postal Service than would the applicable UPU terminal dues rates.

⁷ Excel file (non-public) Netherlands_MD_IB_2012.11.13.xls, worksheet tab 10_Current_TDues_Rates.

Functional Equivalence. The Postal Service states that although the PostNL 2013 Agreement is functionally equivalent to the China Post 2010 Agreement, TNT Agreement, Hongkong Post 2011, and Agreement China Post 2011 Agreement, there are differences between the instant Agreement and the other four. *Id.* at 9. Based upon a comparison of the instant Agreement with the terms of the TNT Agreement, the Postal Service identifies differences between the agreements, including: recognizing a change in the name of the postal operator of the Netherlands from TNT Post to PostNL; Article 3, Oversight and Effective Date, including an additional paragraph concerning changing Accounting Business Rules related to settlement payments; the addition of Article 8, Customs Inspection; Article 9, Termination, revising and including additional details concerning termination; Article 14, Confidentiality Requirements, identifying information to be provided to the Commission by the Postal Service pursuant to law; Article 22, Entire Agreement, providing reference to the TNT Agreement and the Exprès Service Agreement; Article 23, Term, stating that the agreement will remain in effect for two years; and, the addition of Article 24, Intellectual Property, Co-Branding and Licensing, and Article 25, Survival. Other differences include the identity of the signatories, and the address of the Postal Service and PostNL. *Id.* at 10 – 11.

The Postal Service “does not consider that the specified differences . . . affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts.” *Id.* at 11. The Public Representative concludes that these differences do not affect the similarity of the cost characteristics between the two agreements. Therefore, the Public Representative considers the instant Agreement to be functionally equivalent to the TNT Agreement.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

James F. Callow
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6839
callowjf@prc.gov